

**From:** John McBride  
**To:** Microsoft ATR  
**Date:** 12/18/01 1:38am  
**Subject:** Microsoft Settlement

Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice

Dear Ms. Hesse,

As stated on the subject line, I am writing you this letter in regard to the proposed settlement between the United States Justice Department and the Microsoft Corporation.

I must tell you up front that I am not a lawyer or economic specialist. My only real interest in the case stems from my profession as a computer programmer, a means with which I have earned my living (to some extent) since the mid 1980s.

As outlined at the DOJ website, I have reviewed the various sections of the document found at :

<http://www.usdoj.gov/atr/cases/f9400/9495.htm>

As I am a simple person, I am partitioning this message into three parts. The first part will address the shortcomings I perceive in the proposal, the second part will address what I believe to be positive areas of the proposal, and the final section will be a declaration of my personal concerns about the overall proposal.

I will quote the portions of the document that concern me, then follow the quote with some type of comment.

Part One : Shortcomings of the Proposal:

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"Section III. Prohibited Conduct"

"A. Microsoft shall not retaliate against an OEM..."

"B. Microsoft's provision of Windows Operating System Products to Covered OEMs..."

"C. Microsoft shall not restrict by agreement any OEM..."

Microsoft's upcoming strategy is to replace hardware OEMs (Dell, HP, Compaq) with their own hardware platform, and derivatives of the same, known as "The Xbox". These prohibitions are meaningless in such a scenario.

"Section III. Prohibited Conduct"

"E. Starting nine months after the submission of this proposed..."

"D. Starting at the earlier of the release of..."

Part of the text includes the wording "...for the sole purpose of interoperating with a Windows Operating System Product..." Does this mean that any code written must, at the time of execution, be connected on at least one end to a Microsoft product? In other words, Microsoft is guaranteed 50% market share during a transaction instance? If this interpretation can be made, it is hardly a penalty--it is guaranteed market share.

"Section III. Prohibited Conduct"

"F.2. Microsoft shall not enter into any agreement relating..."

The wording is so complex that it will be, in practice, easily circumvented.

"Section III. Prohibited Conduct"

"J.1; J.2 ..."

IP, Piracy, Hackers...this is an enormous loophole; an open hoop that Microsoft will jump through in an instant. These two sections, in many ways, invalidate the entire proposal.

Part Two: Positive Areas of the Proposal:

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Anything exposing the inner workings of the Windows System, both the protocols and APIs, so that programmers, researchers and scientists can make their products work efficiently and competitively with the Microsoft Platform are beneficial. I hope that Section III.E,D can be interpreted in such a way that no Microsoft product need be present in the transaction using such exposed protocols and APIs.

Part Three: Declaration of Personal Concerns:

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My primary personal concern is that, at nearly every technical conference I attend, there is an increased Microsoft presence at a rate that far exceeds the market saturation of General Motors (1950's) and IBM (1970's)--both of which had dealings with the US Government regarding antitrust issues--in the American marketplace

Given the extreme market penetration, the continuing patterns of abuse, and a marketing department that (quite frankly) lies at every opportunity, all I can say about Microsoft (with regards to this proposal) is the following statement:

"As a result of this proposal, Microsoft will have an increased presence on computers and computing devices in the near and long term. Consumers

will continue to have less choice in the computing environments they use, as such, the proposed settlement will not have accomplished its goal--to end the Microsoft monopoly on computing devices".

If the DOJ and Federal Government were serious about increasing consumer choice, you would have found a way to mandate Operating Environments (in general) on a percentage basis, in much the way broadcasting and monetary environments are regulated. Indeed, the political arm would have insured that no platform ever control more than, say, thirty percent of the user or server environment. Until the Federal Government and the DOJ acknowledge this reality, my choice in computing environments is, quite simply, Microsoft. The proposal has not, and will not, change this reality.

Thank you for your fine service, and I strongly appreciate this opportunity to express my opinions.

Sincerely,

John McBride,  
North Edwards, CA